IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.1.2005

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

W.P.No.12771 of 1997

A. Balasubramanian .. Petitioners

Vs.

1. The Executive Engineer
(Operation and Maintenance)
Tamil Nadu Electricity Board
Sathy.

2. The Superintending Engineer
Gobi Electricity Distribution Circle
Tamil Nadu Electricity Board
Gobi.

3. The Chief Engineer
Distribution Tamil Nadu Electricity Board
Salem Region
Erode.9 .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India for issue of Writ of Certiorarified Mandamus, as stated therein.

* * *

For Petitioner :Mr.Elamurugan

For Respondents :Mr. V.Radhakrishnan

O R D E R

Writ Petition praying for issue of writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 2nd respondent made in Memo No.08487-1/PR.439/Cdl/GEDC/Gobi/Adm/A1/96-1 dated 11.10.1996 as confirmed by 3rd respondent in his proceedings dated 17.4.1997 and to quash the order of the 2nd respondent dated 11-10-1996 and direct the respondents to reinstate the petitioner with all attendant benefits.

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2. In the affidavit filed in support of the petition, the petitioner would submit that he is a diploma holder in Electrical Engineering; that he got first appointed as temporary Casual Labourer in the year 1970 in the Tamil Nadu Electricity Board and thereafter he was permanently absorbed as Switch Board Attendant on 22.2.1973; that he got promoted as Tester Grade-I in August 1978 and then as Foreman Grade-I in December 1986 and thereafter as Junior Engineer Grade II in the year 1987 and as Junior Engineer Grade-I in June 1990; that as Junior Engineer Grade-I, he had to deal with the general public and had to do field work like wireman, Lineman and work with other higher Officials like Assistant Executive Engineer, Assistant Divisional Engineer etc.; that when applications for agricultural service connections are registered, a readiness report is communicated on receipt of sanction from the Higher Officials; that when sanction is received for various service connections, the service connections where lesser work is involved would be carried out first and which requires more work are taken up later; that in view of this, there would be some delay and it would not be according to the serial number of the applications received; that in some cases, without orders from the higher officials, the wireman or lineman would effect the service connections anticipating work orders based on paper orders from the Superiors.

3. The petitioner would further submit in the affidavit that on 19.10.1995 the first respondent/Executive Engineer issued an order of suspension to the petitioner, which was followed by a charge memo. dated 13.11.1995 for some alleged deviations while carrying out the work; that none of the charges indicated any corrupt practices on the part of the petitioner; that in the normal course, the Electricity Board would impose only minor penalties for such mistakes; that the petitioner submitted his explanation on 30.12.1995; that the Executive Engineer conducted an enquiry and thereafter, a written defence was submitted on 4.4.1996 running to nine pages; that after one month another charge memo. was issued by the Superintending Engineer dt.16.3.1996 for similar or identical reasons; that the petitioner submitted his explanation on 20.5.1995; that the first respondent was appointed as an Enquiry Officer and the petitioner submitted his defence on 14.8.1996; that thereafter, a second show-cause notice was issued on 11.9.1996, for which the petitioner submitted his explanation on 13.9.1996; that the 2nd respondent in a mechanical manner issued the proceedings dated 11.10.1996 imposing the penalty of removal from service; that the petitioner sought for time to file an Appeal and thereafter, filed the Appeal and the third respondent rejected the same by his proceedings dated 17.4.1997 and having aggrieved, the

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petitioner has come forward to file the above writ petition praying for the relief extracted supra.

4. In the counter filed by the first respondent, he would submit that normally the applications for agricultural service connections are received and registered at the Executive Engineer's office; that the applications are released according to the yearly targets fixed by the Authorities and according to these applications registered, as per the seniority, the Assistant Engineer/Junior Engineer would prepare necessary estimates and on getting sanction order from the Competent Authority, the Junior Engineer would obtain work orders and connected materials would be drawn from the Departmental stores and service connection would be effected; that it is not correct to state that the service connections which need lesser work would be carried out first and others will be taken up later; that if the service connection is effected for an unregistered application that clearly would amount to unauthorised service, theft of energy and bribe motive; that it is also not true that wireman/line Inspector would effect supply in anticipation of work order from the higher officials; that the first disciplinary proceeding against the petitioner was taken up by the Executive Engineer for lapses committed by him and a charge had been subsequently framed by the Superintending Engineer; that the second respondent had appointed the Executive Engineer as Enquiry Officer to conduct enquiry into both the charge memos.; that taking into account the seriousness of the proven charges, the second respondent had issued final orders removing the petitioner from service; that according to the first respondent, the petitioner had committed grave misconduct of overlooking the priority in effecting service connections, shifting of Low Tension lines without proper sanction and thereby, causing loss of revenue to the Electricity Board and effecting unauthorised service connections to agricultural purposes without proper sanction, work order and without any application, by misusing Board materials which are grave in nature; that according to the first respondent, since the Superintending Engineer is the Appointing Authority, he is competent to impose major punishment of removal from service; that the petitioner has represented to the Chief Engineer and only after having a personal hearing he awarded the punishment; that subsequently, the petitioner filed an Appeal beyond the stipulated time and it was rejected; that the petitioner has also filed a mercy petition to the Chairman and it is pending consideration.

5. The first respondent in his counter would further submit that only to avoid two final orders both the disciplinary proceedings were clubbed together and final order

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was passed and the final order is within the purview of the Disciplinary Proceedings Manual and there is no violation of principles of natural justice; that he followed all the Rules and Regulations and after affording sufficient opportunity to the petitioner has passed the enquiry report and the Disciplinary Authority also, after independent consideration, has passed the order of removal from service. On such grounds, the respondents would seek this court to dismiss the Writ Petition as devoid of merits.

6. During arguments, the learned counsel appearing on behalf of the petitioner would submit that firstly the combining of two sets of charges on the part of the Disciplinary Authority is illegal and this is not permitted under Rules; that the charges must be separate on separate delinquency based on which a separate enquiry has to be held wherein separate defences could be taken and separate punishments could be awarded. At this juncture, the learned counsel would submit that the copy of the enquiry report was not supplied to the petitioner and non-supply of the enquiry report along with the second show cause notice is a serious irregularity which would vitiate the entire proceedings.

7. Secondly, the learned counsel would point out that the first charge memo. was issued by the first respondent and the second charge memo. was issued by the second respondent, which itself is illegal; that the second respondent would point out that the first respondent as an Enquiry Officer, who himself had already issued a charge memo. against the petitioner and therefore the first respondent proceeded with the biased mind.

8. Thirdly, the learned counsel would point out that the Disciplinary Proceeding being a quasi judicial proceeding, the authority should have given reasons in accepting his explanations and defence statement offered; that the petitioner submitted his defence statement for the first charge memo ranging to 9 pages as on 4.4.1996, either in the enquiry report or in the final order there has been no whisper about this defence statement at all. Likewise, for the second charge memo dated 14.8.1996 he submitted his defence statement and the same had not been considered in spite of the same ranging to 11 pages, but for the second show-cause notice dated 11.9.1996 the reply dated 30.9.1996 had been sent. On such grounds, the learned counsel for the petitioner would ultimately pray for the relief extracted supra.

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9. In reply, the learned counsel appearing on behalf of the respondents would submit the following judgement reported in APPAREL EXPORT PROMOTION COUNCIL Vs. A.K.CHOPRA (1999(1) SCC 759), wherein it has been held:

> "It is a settled position that in department proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even in so far as imposition of penalty or punishment it concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.
>
> "Further, it is a well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is not concerned with the

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> correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, is directed not against the decision, but is confined to the examination of the decision-making process."

10. The learned counsel for the respondent would further rely on a judgment of the Honourable Supreme Court delivered in LALIT POPLI Vs. CANARA BANK AND OTHRS reported in 2003 (3) SCC 583 wherein it has been held:

> "While exercising jurisdiction under Article 226 of the Constitution, the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority."

11. The learned counsel for the respondent would also cite a judgment of the Honourable Apex Court delivered in STATE BANK OF PATIALA & OTHERS Vs. S.K.SHARMA [1996(3) SCC 364), wherein it has been held that 'once the petitioner fails to establish as to how he was prejudiced by the denial of reasonable opportunity, he cannot complain violation of principles of natural justice'. The learned counsel would also cite a judgment of this Court delivered in G.AKBAR vs. THE UNION OF INDIA, REP. BY THE DIRECTOR GENERAL, RAILWAY PROTECTION FORCE, INDIAN RAILWAYS, NEW DELHI AND OTHERS reported in 2004 (2) CTC 277 wherein a learned single Judge of this Court has followed the judgments of the Apex Court supra."

12. The learned counsel would say that the test is the two independent enquiries have been held by separate officers and findings of both the charges were clubbed with these two charges having come to be established punishment was arrived at to remove the petitioner from service and in clubbing these two orders into one, no prejudice is caused to the petitioner. On such arguments, the learned counsel for the respondents would pray to dismiss the above writ petition.

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13. However, to rebut the above allegations in the reply, the learned counsel for the petitioner would lay emphasis that second respondent has extracted the various charges without discussion or satisfaction that since no fresh evidence could be adduced to disprove the charges based on the irregularity of the charges thus the order could be held illegal. He would ultimately end up saying that 33 years of clean record of service has been annexed by the petitioner and on such grounds would pray to the relief sought for in the above writ petition.

14. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what this Court could easily assess from the Disciplinary Proceedings held against the petitioner is that at two stages, two sets of charge memos were issued one by the first respondent and the other by the second respondent and for the proof of the second charge framed by the second respondent, the first respondent has been appointed as the Enquiry Officer to conduct the enquiry in the Disciplinary Proceedings initiated against the petitioner, which is nothing but a serious irregularity since it was the first respondent who framed the first set of charge memo. and he started the enquiry proceedings only based on the biased mind and therefore no fair enquiry has been held by him.

15. It would further be argued that both the charge memos have not been issued by one and the same authority but by different authorities and though different proceedings were held ultimately both the proceedings were clubbed together and the punishment was arrived at, for which there is no provision in the Electricity Act or Rules and therefore the entire enquiry proceeding initiated against the petitioner is vitiated in law.

16. Though on the part of the learned counsel appearing on behalf of the respondents, he would argue to the effect that The Electricity Board Laws provide for clubbing of the two enquiry reports for passing orders in the twin Disciplinary Proceedings initiated by the authorities, still he was not able to produce any proof from the Rules and therefore it has to be held that the charges levelled against the petitioner in the disciplinary proceedings stand controverted.

17. Even the other point argued to the effect that the appointing authority, the first respondent has acted as the Enquiry Officer regarding the 5 charges framed, cannot be said to be fair or proper since he was one who framed the first set of charges and therefore bias mind cannot be ruled out.

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18. Thirdly, the non supply of the enquiry report along with the second show-cause notice seeking explanation from the petitioner affects the case of the prosecution in no small measure and therefore these inconsistencies, irregularities and illegalities committed in the disciplinary proceedings would only lead to vitiate the entire Disciplinary Proceedings initiated against the petitioner. The charges have also been not definite so as to permit the petitioner to take proper defence.

19. For all the above illegalities that have crept into the above disciplinary proceedings initiated against the petitioner on a over all consideration of the entire facts and circumstances of the case encircling the whole case of the prosecution does not permit the court to agree with the conclusion arrived at by the disciplinary authority and the punishment inflicted by the appellate authority which has simply concurred with the view of the disciplinary authority without going into the vital aspects of the case extracted supra and therefore the orders of both the disciplinary authority and the appellate authority as well have to be set aside and accordingly they are set aside.

In result,

(i) the above writ petition succeeds and the same is allowed;
(ii) The order passed by the 2nd respondent relating to the proceedings made in Memo No.08487-1/PR.439/Cdl/GEDC/Gobi/Admn/A1 dated 11.10.1996 as confirmed by the 3rd respondent in his proceedings dated 17.4.1997 are hereby quashed;
(iii) The respondents are hereby directed to reinstate the writ petitioner into service with all attendant benefits due and payable to him forthwith;
(iv)There shall be no order as to costs.

20-1-2005

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Asst.Registrar

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Sub Asst.Registrar

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1 cc to Mr.V.Radhakrishnan, Advocate, SR.2783
1 cc to Mr.S.Elamurugan, Advocate, SR.2227

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